APPENDIX A

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

No. C.—43272

STATE OF OREGON, *Plaintiff*,

v.

ISAIAH H. HAMMONS, *Defendant*.

Judgment and Sentence

On this 31st day of August, 1964, this case came before the court, the State of Oregon appearing by WARNER W. GREGG, Deputy District Attorney, and the above-named defendant appearing in person and with his attorney NATHAN J. AIL.

IT IS ADJUDGED that the said defendant has been convicted on his plea of Not Guilty and verdict of GUILTY of the offense of RECEIVING AND CONCEALING STOLEN PROPERTY.

This being the time for imposition of sentence, and no reason appearing to the court why sentence should not be pronounced at this time,

IT IS ORDERED AND ADJUDGED that said defendant be imprisoned in the Oregon State penitentiary for an indeterminate period of time, the maximum term of which shall be and hereby is fixed at Three (3) Years.

FURTHER ORDERED that said defendant be forthwith taken into custody and that his bond herein be exonerated.

FURTHER ORDERED that the amount of bond on appeal herein be fixed in the sum of $5,000.00.

ALAN F. DAVIS
Judge

APPENDIX B

Order Allowing Attorney's Fees

It appearing to the Court that the above-named defendant, ISAIAH H. HAMMONS was tried and found guilty of the crime of RECEIVING AND CONCEALING STOLEN PROPERTY under the laws of the State of Oregon, that the said defendant at said time was without funds and unable to retain his own counsel and that said defendant did request the Court to appoint suitable counsel to represent him; on appeal to the Supreme Court;

And it further appearing that Nathan J. Ail was so appointed by the Court and that thereafter the said Nathan J. Ail was retired as counsel for said defendant; and the Court being fully advised.

IT IS NOW THEREFORE ORDERED that in accordance with ORS 138.440 the said Nathan J. Ail be allowed the sum of $100.00 for his services in representing the above-named defendant, and the Clerk of the Court is hereby directed to issue a warrant upon the Treasurer of Multnomah County in favor of said Nathan J. Ail in said sum, in payment therefor.

Dated this 3 day of June, 1965

ALAN F. DAVIS
Judge

APPENDIX C

Notice of Appeal

TO: SI COHN, Clerk of the Circuit Court of the State of Oregon for the County of Multnomah

TO: GEORGE A. VAN HOOMISSEN, District Attorney for Multnomah County, State of Oregon

TAKE NOTICE, That the defendant, ISAIAH H. HAMMONS, in the above entitled cause, acting by and through Nathan J. Ail, his attorney, does hereby appeal to the Supreme Court

of the State of Oregon from the final judgment, and the whole thereof, made and entered in the above entitled cause on August 31, 1964.

DATED this 19th day of October, 1964.

NATHAN J. AIL
Attorney for Defendant

APPENDIX D

Defendant-Appellant Designation of Record on Appeal

Defendant-Appellant, Isaiah H. Hammons, hereby designates as the record on appeal in the above entitled cause the entire trial Court file, together with the Transcript of Testimony taken before the Trial Judge, Honorable Alan F. Davis, including hearing on Motion to Suppress Evidence and all the instructions given and requested.

Defendant-Appellant herein desires that the originals, or copies of the exhibits in the above entitled cause designated below shall be transmitted to the reviewing Court to which this appeal is being taken as part of the record on appeal. Said exhibits are as follows:

1. Complaint H-6840
2. Transcript of Judgment, Twila Eileen Brockell
3. Transcript of Judgment, Isaiah H. Hammons
4. Inventory of Articles, dated 2/15/64
5. List of Property, dated 2/14/64
6. A Pawn Slip.
7. Letter

Dated at Portland, Oregon this 4th day of December, 1964.

NATHAN J. AIL
Attorney for
Defendant-Appellant

APPENDIX E

Order Settling Transcript

On the application of Nathan J. Ail, attorney for defendant,

IT IS ORDERED that the transcript of testimony and proceedings in this case is hereby settled and approved as filed.

Dated this 29 day of December, 1964.

ALAN F. DAVIS
Judge

APPENDIX F

Motion for Withdrawal of Attorney

Comes now Nathan J. Ail, attorney for Defendant-Appellant herein and respectfully moves the Court for an Order permitting said attorney to withdraw as attorney for the Defendant-Appellant for the reason that, in said attorney's judgment and opinion, no prejudicial error appears in the defendant's trial Court record and there is therefor no substantial question to be raised by an appeal in this case.

NATHAN J. AIL
Attorney for
Defendant-Appellant

This Motion is based upon the affidavit of Nathan J. Ail, which is attached hereto, marked Exhibit "A" and incorporated herein.

NATHAN J. AIL
Attorney for
Defendant-Appellant

APPENDIX G

Affidavit

STATE OF OREGON
COUNTY OF MULTNOMAH } ss.

I, Nathan J. Ail, being first duly sworn, do hereby depose and say:

That I am the attorney appointed by the Honorable Alan F. Davis, Judge of Department No. 4, Multnomah County Circuit Court, to represent Isaiah H. Hammons, an indigent, with respect to the above captioned appeal to the Supreme Court of the State of Oregon; that at the time of filing the appeal in this case, it was my opinion that the trial Court had committed prejudicial error by reason of its failure to suppress certain evidence which Defendant-Appellant had contended had been obtained through unlawful search and seizure; that I have spent a considerable number of hours researching the law on this question for the State of Oregon, the several states, and the United States, and have come to the conclusion that the trial Court did not commit any error in connection with such matter; that, furthermore, I have carefully scrutinized the transcript of trial in this case for prejudicial error, and, in my opinion, it does not appear that the trial Court committed any prejudicial error.

NATHAN J. AIL
Attorney for
Defendant-Appellant

Subscribed and sworn to before me this 11th day of February, 1965.

HARRY E. KREBLEHAU
Notary Public for Oregon

My Commission Expires: 11/20/68

APPENDIX H

Order Extending Time To File Brief

It is hereby ordered that the time in which to serve and file APPELLANT'S BRIEF in the above entitled cause be and the same is extended to and including March 1, 1965 pursuant to the foregoing application.

Dated: Jan. 26, 1965

WM. M. MCALLISTER
Chief Justice

APPENDIX I

Order

The above-entitled matter came on for hearing on the motion of counsel for defendant for withdrawal of attorney, the State of Oregon appearing by Lewis B. Hampton, Deputy District Attorney, and the defendant appearing in person and with his attorney, Nathan J. Ail, and the court being fully advised,

IT IS HEREBY ORDERED AND ADJUDGED that Nathan J. Ail be and he hereby is relieved as counsel for said defendant in any further proceedings herein on the appeal.

Dated this 15th day of February, 1965.

ALAN F. DAVIS
Judge

APPENDIX J

Notice

To:

Mr. Nathan J. Ail, Attorney for Appellant

Mr. George VanHoomissen, Attorney for Respondent

It appearing from the records and files in this Court that appellant is now in default for failure to file appellant's brief

You are hereby notified that the above entitled appeal will be dismissed for want of prosecution, pursuant to Rule 33, unless good cause be shown within 30 days from this date why the appeal should be retained on the docket.

Dated this 16th day of March, 1965.

F. M. SERCOMBE
Clerk of the Supreme Court

APPENDIX K

Motion for Extension of Time To File Appellant's Brief

Comes now the defendant by and through his attorney, L. B. Sandblast, and respectfully moves the above entitled court for an extension of time within which to prepare, serve and file appellant's opening brief and shows that the attorney previously representing appellant was relieved by the circuit Court without notifying the appellant or providing substitution of attorney to prosecute appellant's appeal and on the further ground that failure of the previous attorney to prosecute the appeal has deprived appellant of his constitutional rights and thereby preventing the appellant from adequately pursuing his rights to a final decision and receive the benefits of an accused in a criminal case, and the appellant contends that the trial court made errors of law on rulings on objections during

the trial which should be reviewed upon appeal in order to give the appellant due process of law, and further represents that it is necessary that an extension of time for at least thirty days be granted to prepare appellant's Brief for service and filing.

/sd/ L. B. SANDBLAST
Attorney for
Defendant-Appellant

APPENDIX L.

STATE OF OREGON
SUPREME COURT

Salem 97310

April 16, 1965

Mr. L. B. Sandblast
Attorney at Law
2233 N. E. 15th Avenue
Portland, Oregon 97212

Re: State v. Isaiah Hammons

Dear Mr. Sandblast:

When defendant's previous attorney, Mr. Nathan Ail, requested the circuit court to relieve him as attorney, he also procured from this Court an order extending time to March 1 for filing the appellant's brief. This was in order that there would be no default. However, no brief was ever filed and the matter has been in default since March 1. Therefore, the Chief Justice will not sign an order at this time extending time, but it will be necessary for you to file a motion pursuant to Rule 35, requesting the relief from default and for time. Since these matters must be passed upon by the entire Court, your motion or a supporting affidavit should give a full explanation as to the situation. In that connection, it is our understanding that the defendant has disappeared and his whereabouts are unknown. If he has now been located and has retained

you, please so advise. It is assumed that you have not been appointed by the circuit court and that the county is not responsible for payment of any expenses or fees in connection with this appeal.

Very truly yours,

F. M. SERCOMBE
Clerk

FMS:c

cc: Mr. George VanHoomissen
Portland

APPENDIX M

Motion To Dismiss Appeal

Comes now the respondent by and through George Van Hoomissen, District Attorney for Multnomah County, Oregon, by Harold J. Blank, Deputy District Attorney, and respectfully moves the Court for an order dismissing the appeal in the above-entitled case on the grounds and for the reason:

(1) That the appellant has been in default since March 1, 1965;

(2) That appellant has failed to file application for relief from default, and

(3) That on the 16th day of April, 1965, the Clerk of the Supreme Court of the State of Oregon notified attorney L. B. Sandblast of said default and of the necessity of filing application for relief from default.

GEORGE VAN HOOMISSEN
District Attorney for
Multnomah County, Oregon

By HAROLD J. BLANK
Harold J. Blank
Deputy District Attorney
Of Attorneys for
Plaintiff-Respondent

APPENDIX N

Motion To Relieve Appellant of Order of Default

Comes now the appellant herein by his attorney, L. B. Sandblast, and respectfully moves this Court for an order Relieving the Appellant of the Default Order made by this Court on March 1, 1965, in this matter.

In support of this motion there is annexed hereto an affidavit made by L. B. Sandblast, appellant's attorney and which is referred to as fully as if the same was set out at this place.

L. B. SANDBLAST
Attorney for Appellant

In presenting this motion the appellant inquires: (1) Was appellant accorded due process of law when neither he nor his attorney was given notice of the time limited within which to file an opening brief? If this question is answered in the negative this motion should be granted: (2) Was it the duty of the Respondent, The State of Oregon, to give due and adequate notice to the appellant and or his attorney before moving the court for an order of default? If it was, then this motion should be granted.

L. B. SANDBLAST
Attorney for Appellant

APPENDIX O

Motion To Relieve Appellant of Order of Default

STATE OF OREGON,
COUNTY OF MULTNOMAH } ss.

I, L. B. Sandblast, being first duly sworn depose and say:

The appellant was indicted and convicted of a felonious charge in the Circuit Court of the State of Oregon for the County of Multnomah; whereupon Attorney Nathan Ail,

who tried the case before the said Circuit Court, filed a Notice of Appeal to this Court. The transcript was settled. Later Mr. Ail moved the trial Court for an order to relieve him as attorney for the appellant. This motion was allowed by the Court. Some time elapsed and on March 1, 1965, this Court entered an Order of Default for want of an opening brief.

After said conviction, the appellant applied to the Allied Bonding Company for bail pending appeal. In his application the appellant appointed me as his attorney on the appeal See "Exhibit A", annexed hereto and made a part of this affidavit as fully as if set out at this place. No substitution of attorney was made at the time Mr. Ail was relieved as appellant's attorney. No notice was given to me of the withdrawal of Mr. Ail, nor was any notice given to appellant (so far as I know) of the time limit within which to file an opening brief, to the effect that unless one was filed an order of default would be made March 1, 1965.

On April 14, 1965, the Allied Bonding Company made demand upon me to act as attorney for appellant pursuant to the appointment by the appellant at the time the bond was issued. I had no knowledge of the time limit within which to file an opening brief until that day, April 14, 1965. Based upon the appointment of me as attorney for appellant I filed a Motion for Extension of time within which to file an opening brief, that date.

This affidavit is made in support of a motion to Relieve the appellant of the Default Order heretofore made by this court in the above-entitled matter.

L. B. SANDBLAST

Subscribed and sworn to before me this 23rd day of May, 1965.

RAYMOND J. SANDBLAST
Notary Public for Oregon

My Commission Expires April 14, 1967

APPENDIX P

BE IT REMEMBERED that at a regular term of the SUPREME COURT of the State of Oregon begun and held at the courtroom in the city of Salem on the first Monday, the 1st day of MARCH 1965, WHEREUPON on this WEDNESDAY, the 2nd day of JUNE 1965, the same being the 41st judicial day of said term, there were present:

Wm. M. McAllister, Chief Justice
William G. Perry, Associate Justce
Gordon W. Sloan, Associate Justice
Kenneth J. O'Connell, Associate Justice
Alfred T. Goodwin, Associate Justice
Arno H. Denecke, Associate Justice
Ralph M. Holman, Associate Justice, and
F. M. Sercombe, Clerk,

when the following proceedings were had:

Appeal from MULTNOMAH County

No. C-43272

STATE OF OREGON, *Respondent*

v.

ISAIAH H. HAMMONS, *Appellant*

The court having duly considered respondent's motion to dismiss the above entitled appeal to this court, and appellant's motion for relief from default, and the court being fully advised therein,

IT HEREBY IS ORDERED that respondent's motion to dismiss the above entitled appeal be and the same hereby is allowed.

IT FURTHER IS ORDERED that appellant's motion for relief from default be and the same hereby is denied.

IT FURTHER IS ORDERED that respondent have and recover of and from appellant its costs and disbursements in this court taxed at $15.00.

IT FURTHER IS ORDERED that this cause be remanded to the court below from which the appeal was taken with directions to enter an order in accordance herewith.

APPENDIX Q

Motion for Reconsideration

TO: The Honorable Justices of the Supreme Court of Oregon:

Comes now the appellant by his attorneys, L. B. Sandblast and Paul M. Long, and respectfully moves the Court for Reconsideration of its Order Denying Relief from Order of Default, on an additional ground or specification, as follows: That the trial court erred in relieving the attorney of record by allowing him to withdraw from this appeal without concurrently appointing a substitute attorney to carry this case to the Supreme Court for final conclusion and decision, particularly because the trial court had declared the appellant without funds and to be an indigent.

L. B. SANDBLAST
PAUL M. LONG
Attorneys for Appellant

In presenting this motion for Reconsideration appellant will rely on the Sixth and Fourteenth Amendments to the Constitution of the United States of America.

L. B. SANDBLAST
PAUL M. LONG
Attorneys for Appellant

APPENDIX B

BE IT REMEMBERED that at a regular term of the SUPREME COURT of the State of Oregon begun and held at the courtroom in the city of Salem on the first Monday, the 1st day of MARCH 1965, WHEREUPON on this TUESDAY, the 29th day of JUNE 1965, the same being the 52nd judicial day of said term, there were present:

Wm. M. McAllister, Chief Justice
William C. Perry, Associate Justice
Gordon W. Sloan, Associate Justice
Kenneth J. O'Connell, Associate Justice
Alfred T. Goodwin, Associate Justice
Arno H. Denecke, Associate Justice
Ralph M. Holman, Associate Justice, and
F. M. Sercombe, Clerk,

when the following proceedings were had:

Appeal from MULTNOMAH County

STATE OF OREGON, *Respondent*

v.

ISAIAH HAMMONS, *Appellant*

The court having duly considered appellant's motion for reconsideration of dismissal, and the court being fully advised therein,

IT HEREBY IS ORDERED that said motion be and the same hereby is denied.

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No. 493

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FILED
SEP 23 1965
JOHN F. DAVIS, CLERK

In the Supreme Court

of the United States

OCTOBER TERM, 1965

ISAIAH H. HAMMONS,

Petitioner,

v.

THE STATE OF OREGON,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Oregon

BRIEF FOR RESPONDENT IN OPPOSITION

GEORGE VAN HOOMISSEN,
District Attorney for
Multnomah County, Oregon,
GEORGE M. JOSEPH,
Deputy District Attorney,
600 County Courthouse,
Portland, Oregon, 97204,
Counsel for Respondent.

September 20, 1965.

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE. 9-65

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In the Supreme Court
of the United States

OCTOBER TERM, 1965

No. 493

ISAIAH H. HAMMONS,

Petitioner,

v.

THE STATE OF OREGON,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Oregon

BRIEF FOR RESPONDENT IN OPPOSITION

The State of Oregon, respondent herein, opposes the petition of Isaiah H. Hammons for a writ of certiorari to review the judgment of the Supreme Court of the State of Oregon, entered in this case on June 2, 1965.

OPINIONS BELOW

Correct copies of the opinions of the Supreme Court of the State of Oregon accompany the petition. (Appendices P and R)